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EXAMINER

DANIEL JR, WILLIE J

ART UNIT

PAPER NUMBER

2686

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/882,759

Applicant(s)

MCALINDEN, PAUL

Examiner

Willie J. Daniel, Jr.

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-18 and 32-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-18 and 32-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's RCE amendment filed on 25 May 2005. **Claims 1-4, 6-18, and 32-40** are now pending in the present application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites the limitation "...store the requested configuration information in the **second portion...**" in lines 8-9 of the claim. The applicant failed to provide page(s), line(s), and figure(s) of the instant application that supports the limitation of the claim(s). The applicant is advised to review the cited subject matter of the specification (see pg. 4, lines 21-23), which states "...**first portion** 25(1) may be capable of storing configuration information...".

Claim 8 recites the limitation "...automatically..." in line(s) 3 of the claim. The applicant failed to provide page(s), line(s), and figure(s) of the instant application that

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supports the limitation of the claim(s). The applicant is advised to review the cited subject matter of the specification (see pg. 7, lines 9-11), which does not state "...**automatically**..."

Regarding **Claims 1 and 8**, the claim includes limitations that are not supported by the specification as originally filed. The Examiner respectfully requests the applicant to provide page(s), line(s), and figure(s) of the instant application that supports the limitation(s) of the claim(s) and/or any supportive comment(s) to help clarify and resolve this issue(s).

3. This list of examples is not intended to be exhaustive. The Examiner respectfully requests the applicant to review all claims and clarify the issues as listed above as well as any other issue(s) that are not listed.
4. The previous 112 rejection of claim 8 is withdrawn (see office action mailed on 10 March 2005).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-7, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (US 6,052,600) in view of Webster et al. (hereinafter Webster) (US 6,449,493 B1) and Criss et al. (hereinafter Criss) (US 6,735,434 B2).

Regarding **Claim 1**, Fette discloses a software programmable radio (200) which hereinafter reads on the claimed “portable device” (see col. 4, lines 54-67; Figs. 1 and 2), comprising:

a memory (206) which hereinafter reads on the claimed “storage unit” having a first portion and second portion (see col. 4, lines 55-56; col. 5, lines 33-49,55-57; col. 6, line 21-23,62-65; Fig. 2 “ref. 206”), where the memory has separate portions for storing information;

a configuration application stored in the second portion (see col. 3, lines 52-57; col. 5, lines 11-13,18-22,33-49,55-57; col. 6, line 21-23,62-65; Fig. 2 “ref. 206”); and

a controller (204) which hereinafter reads the claimed “control unit” communicatively coupled to the storage unit (206) (see Fig. 2),

request configuration information in response to determining that configuration is desired (see col. 3, lines 31-34, col. 4, lines 25-34; col. 7, lines 42-48; Fig. 3), and

receive the requested configuration information (see col. 4, lines 34-36), where the mobile radio receives the requested software updates; and

store the requested configuration information in the second portion of the storage unit (206) (see col. 5, lines 33-48, 55-57; col. 4, lines 27-35; Figs. 2 “ref. 206”, 3, and 4), where the controller stores the information (e.g., software programs, configuration/reconfiguration files, waveforms, licenses) in portions of the storage unit. Also, the storage unit (206) has separate portions as shown in Fig. 2 “206”. Fette fails to disclose having the features the second portion comprising a protected region; the control unit to execute the configuration application to determine whether configuration of the portable device is desired. However,

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the examiner maintains that the features the second portion comprising a protected region was well known in the art, as taught by Webster.

In the same field of endeavor, Webster discloses the feature the second portion comprising a protected region (see col. 3, lines 12-15, 44-50; col. 5, lines 46-54; Fig. 1 “ref. 32”), where the regions of the memory uses, for example, dealer programs or passwords to protect against alterations.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Webster to have the feature the second portion comprising a protected region, in order to make operation of the portable or mobile radio simple, as taught by Webster (see col. 1, lines 38-42). The combination of Fette and Webster fails to disclose having the feature the control unit to execute the configuration application to determine whether configuration of the portable device is desired. However, the examiner maintains that the feature the control unit to execute the configuration application to determine whether configuration of the portable device is desired was well known in the art, as taught by Criss.

In the same field of endeavor, Criss discloses the feature the processor (40) which reads on the claimed “control unit” to execute the configuration application to determine whether configuration of the mobile terminal (36) which reads on the claimed “portable device” is desired (see col. 24, lines 36-46; col. 3, lines 44-54; Fig. 2), where the processor according to the schedule table inquires for software update to determines if an upgrade is needed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, and Criss to have the feature the control unit to execute the configuration application to determine whether configuration of the portable device is desired, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **Claim 2**, the combination of Fette, Webster, and Criss discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable (200) device of claim 1, wherein the control unit (204) to further initialize the portable device (200) using at least a portion of the configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **Claim 3**, the combination of Fette, Webster, and Criss discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable device (200) of claim 1, wherein the control unit (204) to determine whether configuration is desired comprises the control unit (204) to detect an indication to upgrade the configuration of the portable device (200) (see col. 2, lines 34-45; col. 4, lines 25-36; col. 7, lines 42-49; Fig. 3), where the portable is able to determine if an upgrade is necessary from the updates requested and received.

Regarding **Claim 4**, the combination of Fette, Webster, and Criss discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable device (200) of claim 1, wherein the control unit (204) to establish a communication

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link (105) with a software distribution computer (SDC) (114) which hereinafter reads on the claimed "remote device" to receive the configuration information (see col. 3, lines 28-41; Fig. 1), where the portable device establishes a connection with the SDC via the base station to the server which is coupled to the SDC.

Regarding **Claim 6**, the combination of Fette, Webster, and Criss discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable device (200) of claim 1, wherein the control unit (204) to receive at least one of an operating system, protocol stack layer, and application layer of the portable device (200) (see col. 3, lines 40-57; col. 4, lines 25-36; col. 6, lines 24-65; Figs. 3 and 4), where the portable device receives information for the operating software, communication protocol, or an application.

Regarding **Claim 7**, the combination of Fette and Webster discloses the limitations claimed, as applied above (see claim 1), in addition Fette further discloses the portable device (200) of claim 1, wherein the control unit (204) to determine (see col. 8, lines 21-37; col. 9, lines 15-19; Figs. 3 "314" and 4 "322"), where the controller determines if the software upgrade is complete and correct. the combination of Fette and Webster fails to disclose having the feature determine whether restoration of the portable device to a prior operational state is desired. However, the examiner maintains that the feature determine whether restoration of the portable device to a prior operational state is desired was well known in the art, as taught by Criss.

Criss discloses the feature determine whether restoration of the portable device to a prior operational state is desired (see col. 14, lines 58-62), where the portable terminal has the ability to use the old version when there is a problem with the new version.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, and Criss to have the feature determine whether restoration of the portable device to a prior operational state is desired, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **Claim 32**, the combination of Fette, Webster, and Criss discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses of the portable device of claim 1, wherein the control unit (204) to determine whether configuration is desired comprises the control unit (204) to detect a problem after an update (see col. 8, line 54-57; col. 8, line 64 - col. 9, line 19; Figs. 3 “ref. 314, 320”, 4 “ref. 322, 324”), where the radio tests the software by checking for problems.

Regarding **Claim 33**, the combination of Fette and Webster discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable device of claim 1, wherein the control unit (204) to determine whether configuration is desired (see col. 2, lines 40-45; col. 3, lines 36-41; col. 4, lines 34-35, 42-44; Fig. 3), where the radio (200) receives the information (software) through the base station (106) which verifies that a update or new software is available. The combination of Fette and Webster fails to disclose having the feature comprises the control unit to receive an indication from a base station to

which the portable device is coupled. However, the examiner maintains that the feature comprises the control unit to receive an indication from a base station to which the portable device is coupled was well known in the art, as taught by Criss.

Criss further discloses the feature comprises the control unit (40) to receive an indication from a base station (28) to which the portable device (36) is coupled (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the host computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, and Criss to have the feature comprises the control unit to receive an indication from a base station to which the portable device is coupled, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **Claim 34**, the combination of Fette and Webster discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses of the portable device of claim 1, wherein the control unit (204) to further verify with a user that the configuration is desired (see col. 4, lines 30-35; col. 5, lines 21-23; col. 7, lines 41-49; Fig. 4 “ref. 334”), where the user can accept or deny the software for configuring the radio. The combination of Fette and Webster fails to disclose having the feature prior to the request for the configuration information. However, the examiner maintains that the feature prior to the request for the configuration information was well known in the art, as taught by Criss.

Criss further discloses the feature prior to the request for the configuration information (see col. 17, lines 19-45; Fig. 11), where the user of the mobile terminal (36) selects software packages which requests the available software.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, and Criss to have the feature prior to the request for the configuration information, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Claims 8-12, 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (US 6,052,600) in view of **Moles et al.** (hereinafter Moles) (US 2002/0072359 A1).

Regarding **Claim 8**, Fette discloses a method, comprising:

detecting a malfunction of a portable device (200) (see col. 8, lines 29-38; col. 9, lines 11-20; Fig. 3 “ref. 316, 324”), where the radio fails to support an operation;

automatically determining in the portable device if configuration of the portable device (200) is desired based on the determination detecting a malfunction (see col. 2, lines 34-45; col. 3, lines 31-41; col. 4, lines 25-36; col. 5, lines 18-21; col. 7, 42-49; Fig. 3), where the radio controller determines if new or updated information is available and request the information for configuring of the radio in which the software is received based upon the user request;

executing one or more instructions on the portable device (200) to receive configuration information in response to determining that configuration of the portable device (200) is desired (see col. 4, lines 25-44; 54-67; col. 7, lines 42-48; Figs. 1, 2, and 3), where the controller determines the need for new or updated software and request and receive the software; and

storing the received configuration information in the portable device (200) (see col. 5, lines 33-41; Figs. 3 and 4), where the controller stores the information (e.g., software programs, waveforms, licenses) in the storage unit. Fette fails to disclose having the feature automatically determining in the portable device if configuration of the portable device is desired based on the determination detecting a malfunction. However, the examiner maintains that the feature automatically determining in the portable device if configuration of the portable device (200) is desired based on the determination detecting a malfunction was well known in the art, as taught by Moles.

In the same field of endeavor, Moles discloses the feature automatically determining in the portable device if configuration of the mobile station (112) which reads on the claimed “portable device” is desired based on the determination detecting a malfunction (see pg. 5, ¶ [0066], lines 13-16; pg. 6, ¶ [0068]; Fig. 5 “ref. 505”), where the MS (112) performs a diagnostic test and detects an internal fault.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Moles to have the feature automatically determining in the portable device if configuration of the portable device is desired based on the determination detecting a malfunction, in order to perform diagnostic

operations on wireless handsets and other types of mobile stations, as taught by Moles (see pg. 2, ¶ [0017]).

Regarding **Claim 9**, the combination of Fette and Moles discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses the method of claim 8, further comprising initializing the portable device (200) with at least a portion of the received configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **Claim 10**, the combination of Fette and Moles discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses the method of claim 8, comprising establishing a wireless connection (105) with a remote device (114) (see col. 3, lines 28-41; Fig. 1), where the portable device establishes a connection with the SDC via the base station to the server which is coupled to the SDC,

transmitting a radio ID which hereinafter reads on the claimed “unique identifier” associated with the portable device (200) (see col. 8, lines 3-14), where a unique radio ID is associated with the portable device for identification of licenses and software, and

receiving configuration information from the remote device (114) associated with the unique identifier (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 42-49; col. 8, lines 3-14), where the controller receives the requested information for the portable device based on the associated radio ID.

Regarding **Claim 11**, the combination of Fette and Moles discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses the method of claim 8, wherein determining if configuration is desired comprises detecting an indication to

reconfigure the portable device (see col. 2, lines 34-45; col. 4, lines 25-36; col. 7, lines 42-49), where the availability of new or updated software will indicate that the portable device will be reconfigured in accordance to the latest software.

Regarding **Claim 12**, the combination of Fette and Moles discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses the method of claim 8, wherein storing the received configuration information comprises storing at least one of an operating system, protocol stack, and application layer of the portable device (see col. 3, lines 40-57; col. 4, lines 25-36; col. 5 lines 33-41; col. 6, lines 24-65; Figs. 3 and 4), where the portable device receives and stores information for the operating software, communication protocol, or an application in the memory.

Regarding **Claim 36**, the combination of Fette and Moles discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses the method of claim 8, further comprising prompting a user to verify that the configuration is desired (see col. 3, lines 31-50; col. 4, lines 30-35; col. 5, lines 21-23; col. 7, lines 41-49; Fig. 4 “ref. 334”), where the user can request new or updated software and accept or deny the software for configuring the radio in which the prompting would be inherent.

Regarding **Claim 37**, the combination of Fette and Moles discloses every limitation claimed, as applied above (see claim 11), in addition Fette further discloses the method of claim 11, further comprising reconfiguring the portable device (200) to a previous operable state (see col. 9, lines 14-20; 50-51; Fig. 4 “ref. 324, 334, 336”), where the return of the radio to a previous operable state would be inherent when test for the update information (software) is unusable or when the user does not accept to software.

Regarding **Claim 38**, the combination of Fette and Moles discloses every limitation claimed, as applied above (see claim 37), in addition Fette further discloses the method of claim 37, further comprising reconfiguring the portable device (200) after an unsuccessful upgrade attempt (see col. 8, lines 24-31; col. 9, lines 14-20; Figs. 3 and 4 “ref. 322, 334, 336”), where the radio is unable to generate the operation of the information (waveform) that has been received in which the reconfiguring would be inherent.

Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (US 6,052,600) in view of **Criss et al.** (hereinafter Criss) (US 6,735,434 B2).

Regarding **Claim 13**, Fette discloses a memory (206) which reads on the claimed “article” comprising one or more machine-readable storage media containing instructions that if executed enable a portable device (200) (see col. 4, line 64 - col. 5, line 21) to:

detected a malfunction of the portable device (200) (see col. 8, lines 29-38; col. 9, lines 11-20; Fig. 3 “ref. 316, 324”), where the radio fails to support an operation;

determine whether configuration information for the portable device (200) is desired (see col. 3, lines 31-41; col. 4, lines 25-36; col. 7, 42-49; Fig. 3), where the radio checks to see if new or updated software (information) is available and request the information to configure the radio;

request the configuration information from a remote device (114) (see col. 4, lines 25-36; col. 7, lines 42-48; Figs. 3 and 4);

store the configuration information in response to requesting the configuration information (see col. 5, lines 11-41; Figs. 3 and 4); and

configure the portable device (200) using the configuration information (see col. 5, lines 11-21; col. 6, lines 62-65; Figs. 3 and 4), where the portable device is configured based on the information for configuring. Fette fails to disclose having the feature receive an indication from a base station that the base station. However, the examiner maintains that the feature receive an indication from a base station that the base station was well known in the art, as taught by Criss.

Criss further discloses the feature receive an indication from a base station (28) that the base station (28) (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the host computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Criss to have the feature receive an indication from a base station that the base station, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **Claim 14**, the combination of Fette and Criss discloses every limitation claimed, as applied above (see claim 13), in addition Fette further discloses the article (206) of claim 13, wherein the instructions if executed enable the portable device (200) to request configuration information in response to detecting an indication to reconfigure the portable device (200) (see col. 2, lines 34-45; col. 4, lines 25-36; 54-67; col. 7, lines 42-48; Figs. 1, 2,

and 3), where the controller determines the need for new or updated software and request and receive the software to reconfigure the portable device based on the user request in which the instructions would be inherent.

Regarding **Claim 15**, the combination of Fette and Criss discloses every limitation claimed, as applied above (see claim 13), in addition Fette further discloses the article of claim 13, wherein the instructions if executed enable the portable device (200) to transmit a unique identifier associated with the portable device and receive the configuration information associated with the unique identifier (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 42-49; col. 8, lines 3-14), where the controller receives the requested information for the portable device based on the associated radio ID.

Regarding **Claim 16**, the combination of Fette and Criss discloses every limitation claimed, as applied above (see claim 13), in addition Fette further discloses the article of claim 13, wherein the instructions if executed enable the portable device (200) to initialize the portable device (200) using at least a portion of the configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **Claim 17**, the combination of Fette and Criss discloses every limitation claimed, as applied above (see claim 13), in addition Fette further discloses the article of claim 13, wherein the instructions if executed enable the portable device (200) to store information to upgrade the configuration of the portable device (200) (see col. 5, lines 33-41; Figs. 3 and 4), where the controller stores the information (e.g., software programs, waveforms, licenses) in the storage unit.

Regarding **Claim 18**, the combination of Fette and Criss discloses every limitation claimed, as applied above (see claim 13), in addition Fette further discloses the article of claim 13, wherein the instructions if executed enable the portable device (200) to store at least one of an operating system, protocol stack, and application layer of the portable device (200) (see col. 3, lines 40-57; col. 4, lines 25-36; col. 5 lines 33-41; col. 6, lines 24-65; Figs. 3 and 4), where the portable device receives and stores information for the operating software, communication protocol, or an application in a memory.

Claims 35 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (US 6,052,600) in view of **Moles et al.** (hereinafter Moles) (US 2002/0072359 A1) as applied to claims 11 and 8 above, and further in view of **Criss et al.** (hereinafter Criss) (US 6,735,434 B2).

Regarding **Claim 35**, the combination of Fette and Moles fails to disclose having the feature wherein detecting the indication comprises receiving the indication from a base station if the base station detects a problem with the portable device. However, the examiner maintains that the feature wherein detecting the indication comprises receiving the indication from a base station if the base station detects a problem with the portable device was well known in the art, as taught by Criss.

Criss further discloses the feature wherein detecting the indication comprises receiving the indication from a base station (28) if the base station (28) detects a problem (e.g., old software version) with the mobile terminal (36) which reads on the claimed “portable device” (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the host

computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Moles, and Criss to have the feature wherein detecting the indication comprises receiving the indication from a base station if the base station detects a problem with the portable device, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **Claim 39**, the combination of Fette and Moles Fette discloses detecting a malfunction (see col. 8, lines 29-38; col. 9, lines 11-20; Fig. 3 “ref. 316, 324”), where the radio fails to support an operation. Fette fails to disclose having the feature by a base station and generating and transmitting an indication to the portable device. However, the examiner maintains that the feature by a base station and generating and transmitting an indication to the portable device was well known in the art, as taught by Criss.

Criss further discloses the feature by a base station (28) and generating and transmitting an indication to the portable device (36) (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the host computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Moles, and Criss to have the feature by a base station and generating and transmitting an indication to the portable device,

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in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (US 6,052,600) in view of **Moles et al.** (hereinafter Moles) (US 2002/0072359 A1) and **Criss et al.** (hereinafter Criss) (US 6,735,434 B2) as applied to claim 39 above, and further in view of **Sharma et al.** (hereinafter Sharma) (US 6,766,165 B2).

Regarding **Claim 40**, the combination of Fette, Moles, and Criss discloses every limitation claimed, as applied above (see claim 39), in addition Fette further discloses establishing a connection (105) between the base station (106) and the portable device (200) (see Fig. 1). The combination of Fette and Criss fails to disclose having the feature secure connection. However, the examiner maintains that the feature secure connection was well known in the art, as taught by Sharma.

In the same field of endeavor, Sharma discloses the feature secure channel which reads on the claimed “connection” (see col. 4, lines 38-43; col. 5, lines 1-7; abstract; Fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Moles, Criss, and Sharma to have the feature secure connection, in order to have flexibility and mobility of a network manager such as an administrator or a technician to manage and troubleshoot problems on a network, as taught by Sharma (see col. 3, lines 10-13; col. 4, lines 34-38).

Response to Arguments

6. Applicant's arguments with respect to claims 1-4, 6-18, and 32-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willie J. Daniel, Jr. whose telephone number is (571) 272-7907. The examiner can normally be reached on 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha D. Banks-Harold can be reached on (571) 272-7905. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WJD,JR
10 October 2005

Marsha D Banks-Harold
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